

APPEAL NO. 170984
FILED JUNE 21, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 16, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury does not extend to right ankle osteochondral injury of the medial talar dome, chronic appearing tears of the "ATFL," chronic healed avulsion injury of the calcaneofibular ligament, deltoid ligament sprain, or right knee lateral patellar friction syndrome; (2) the appellant (claimant) reached maximum medical improvement (MMI) on March 21, 2016; (3) the claimant's impairment rating (IR) is two percent; and (4) the claimant did not have disability from July 28, 2016, through the date of the CCH resulting from an injury sustained on (date of injury).

The claimant appealed, disputing the hearing officer's determinations of extent of injury, MMI, IR, and disability. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, IR, and disability determinations.

DECISION

Affirmed in part as reformed; reversed and rendered in part; and reversed and remanded in part.

The claimant testified that she was injured when she fell while cleaning a shower. The decision and order states stipulation 1.D. as follows: On (date of injury), [the] [c]laimant sustained a compensable injury in the form of a right knee sprain and right ankle sprain, in so far as the parties do not stipulate these conditions include the disputed conditions. A review of the record reflects that the parties stipulated that on (date of injury), the claimant sustained a compensable injury in the form of at least a right knee sprain and right ankle sprain and that the compensable injury does not include a right knee moderate chondromalacia of the patella. The hearing officer's decision and order did not accurately reflect the stipulation of the parties. Accordingly, stipulation 1.D. is reformed to reflect the actual stipulation of the parties as follows: On (date of injury), the claimant sustained a compensable injury in the form of at least a right knee sprain and right ankle sprain. The compensable injury does not include a right knee moderate chondromalacia of the patella.

EXTENT OF INJURY

The Benefit Review Conference Report stated the disputed extent-of-injury issue as follows:

Does the compensable injury of (date of injury), extend to and include right knee moderate chondromalacia of the patella, right knee lateral patellar friction syndrome, right ankle rupture of the anterior talofibular ligament, avulsion injury of the calcaneofibular ligament, osteochondral injury of the medial talar, and deltoid sprain?

At the CCH, the parties agreed to modify the extent-of-injury issue by removing the condition of right knee moderate chondromalacia of the patella and stipulating that the compensable injury of (date of injury), does not extend to that condition. However, the hearing officer did not accurately state two of the conditions which were part of the disputed issue. The hearing officer listed chronic appearing tears of the "ATFL" rather than a right ankle rupture of the anterior talofibular ligament and chronic healed avulsion injury of the calcaneofibular ligament rather than an avulsion injury of the calcaneofibular ligament. However, the parties did not agree to modify these conditions. Accordingly, we reverse that portion of the hearing officer's decision that the compensable injury does not extend to chronic appearing tears of the "ATFL" and chronic healed avulsion injury of the calcaneofibular ligament and remand to the hearing officer for further action consistent with this decision.

That portion of the hearing officer's decision that the compensable injury of (date of injury), does not extend to right ankle osteochondral injury of the medial talar dome and right knee lateral patellar friction syndrome is supported by sufficient evidence and is affirmed.

The hearing officer in her discussion stated in part that a deltoid ligament sprain is a sufficiently complex condition so as to require expert medical causation evidence to establish a causal connection between the compensable injury and this diagnosis. The Appeals Panel has long held that expert medical evidence is not required for sprains/strains. See Appeals Panel Decision (APD) 130160, decided March 18, 2013; APD 120383, decided April 20, 2012; APD 992946, decided February 14, 2000; and APD 952129, decided January 31, 1996. Although the hearing officer could accept or reject in whole or in part any of the evidence before her, the hearing officer is requiring a higher standard than that required under the law, as cited in this decision, to establish causation. Under the facts of this case, with the described mechanism of injury, we decline to hold expert medical evidence was required to prove the compensability of a deltoid ligament sprain.

Additionally, the carrier acknowledged in its closing argument that there was medical evidence in the record saying the deltoid sprain is the right ankle sprain and the carrier accepted a right ankle sprain. In evidence is a medical report from (Dr. D) that stated the deltoid sprain is a function of the work-related event and the mechanism of

injury is consistent with causation of a mild sprain which is verified on the March 31, 2016, right ankle MRI.

In reviewing a “great weight” challenge, we must examine the entire record to determine if: (1) there is only “slight” evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See *Cain v. Bain*, 709 S.W.2d 175 (Tex. 1986).

That portion of the hearing officer’s extent-of-injury determination that the compensable injury of (date of injury), does not extend to deltoid ligament sprain is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Accordingly, we reverse that portion of the hearing officer’s determination that the claimant’s compensable injury of (date of injury), does not extend to deltoid ligament sprain and render a new decision that the claimant’s compensable injury of (date of injury), does extend to deltoid ligament sprain.

MMI/IR

Given that a portion of the extent-of-injury issue has been reversed and remanded to the hearing officer to make a determination consistent with this decision, we reverse the hearing officer’s determination that the claimant has reached MMI on March 21, 2016, and the claimant’s IR is two percent and we remand the issues of MMI and IR to the hearing officer to make a determination consistent with this decision.

DISABILITY

Given that we have reversed a portion of the hearing officer’s extent-of-injury determination and remanded that issue to the hearing officer to make a determination consistent with this decision, we reverse the hearing officer’s determination that the claimant did not have disability from July 28, 2016, through the date of the CCH resulting from an injury sustained on (date of injury), and we remand the issue of disability to the hearing officer to make a determination consistent with this decision.

SUMMARY

We affirm that portion of the hearing officer’s determination that the compensable injury of (date of injury), does not extend to right ankle osteochondral injury of the medial talar dome and right knee lateral patellar friction syndrome.

We reverse that portion of the hearing officer’s determination that the compensable injury does not extend to chronic appearing tears of the ATFL and chronic

healed avulsion injury of the calcaneofibular ligament and remand to the hearing officer for further action consistent with this decision.

We reverse that portion of the hearing officer's determination that the claimant's compensable injury of (date of injury), does not extend to deltoid ligament sprain and render a new decision that the claimant's compensable injury of (date of injury), does extend to deltoid ligament sprain.

We reverse the hearing officer's determination that the claimant reached MMI on March 21, 2016, and remand the issue of MMI to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the claimant's IR is two percent and remand the IR issue to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the claimant did not have disability from July 28, 2016, through the date of the CCH resulting from an injury sustained on (date of injury), and we remand the issue of disability to the hearing officer to make a determination consistent with this decision.

REMAND INSTRUCTIONS

On remand the hearing officer is to address the specific extent-of-injury conditions the parties agreed were in dispute. The hearing officer is to make a determination on the disputed conditions of right ankle rupture of the anterior talofibular ligament and avulsion injury of the calcaneofibular ligament.

The hearing officer is then to make a determination of disability from July 28, 2016, through March 16, 2017 (the date of the CCH), supported by the evidence.

(Dr. K) is the designated doctor appointed in this case for purposes of MMI/IR. On remand, the hearing officer is to determine if Dr. K is still qualified and available. If so, the hearing officer is to inform Dr. K that the compensable injury extends to right knee sprain, right ankle sprain, right ankle deltoid ligament sprain but does not extend to right ankle osteochondral injury of the medial talar dome or right knee lateral patellar friction syndrome. The hearing officer is to request that Dr. K provide alternative certifications of MMI/IR. The assignment of an IR is required to be based on the claimant's condition as of the MMI date considering the medical records and the certifying examination and according to the rating criteria of the Guides to the Evaluation of Permanent Impairment fourth edition (1st, 2nd, 3rd or 4th printing, including corrections and changes as issued by the American Medical Association prior

to May 16, 2000) (AMA Guides) and the provisions of 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)). The parties are to be allowed an opportunity to respond. The hearing officer is to determine the issues of MMI and IR consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **SAFETY NATIONAL CASUALTY CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge